

March, 2008 NEW CASE REPORT

Cottman Transmission Systems, LLC v. Kershner, 2008 U.S.Dist.Lexis 16703 (E.D. Pa., March 3, 2008)(parol evidence rule bars claims for fraud in the inducement of franchise agreement because fraud in the execution was not alleged; breach of the implied covenant of good faith and fair dealing was alleged because claim arose out of termination)

McClain v. Octagon Plaza, LLC, 2008 Cal.App.Lexis 157 (2d App. Dist., Jan. 31, 2008)(a contracting party cannot exempt himself from his own fraud by stipulation in the contract because of Civil Code Section 1668, which states: “[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud...whether wilful or negligent, are against the policy of the law”)

GNC Franchising LLC v. Kahn, 2008 U.S.Dist.Lexis 16046 (W.D. Pa., March 3, 2008)(summary judgment granted for franchisor because the franchisee’s breach of the implied covenant of good faith and fair dealing claims were not alleged in connection with termination)

Edwards v. Arthur Anderson LLP, 142 Cal.App.4th 603 (2006)(appeal in California Supreme Court pending)(“We believe the Ninth Circuit’s ‘narrow restraint’ gloss on section 16600 is a misapplication of California law when applied to an employee’s noncompetition agreement.”)

Choice Hotels Int’l, Inc. v. SM Property Management, LLC, 2008 U.S.App.Lexis 4292 (4th Cir., Feb. 28, 2008)(arbitration award for franchisor reversed and franchisee denied claim for attorney’s fees because dispute had not been finally adjudicated in arbitration)

Schlotsky’s, Ltd. v. Sterling Purchasing and National Distribution Co., Inc., 2008 U.S.App.Lexis 4801 (5th Cir., March 5, 2008)(distributor’s tying claims against franchisor dismissed; franchisor’s Lanham Act “false designation of origin” claims against distributor upheld)

Susteen Inc. v. Sourcenext Corp., 2008 U.S.App.Lexis 3358 (9th Cir., Feb. 14, 2008)(unpublished)(when licensor elects to terminate a license agreement after the licensee’s breach, then the obligation to pay future royalties ceases)

Davis v. Dell, Inc., 2007 U.S.Dist.Lexis 94767 (D.N.J., Dec. 28, 2007)(class action arbitration waiver in consumer contract upheld under Texas and New Jersey law)